

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CenterPoint Energy, Inc.)	File No.: EB-FIELDSCR-12-00003788
)	NAL/Acct. No.: 201332540001
Owner of Antenna Structure Number 1281666)	FRN: 0001687920
Katy, Texas)	
)	

FORFEITURE ORDER

Adopted: August 1, 2014

Released: August 1, 2014

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$10,000 against CenterPoint Energy, Inc. (CenterPoint) for failing to exhibit required antenna structure lighting and notify the Federal Aviation Administration (FAA) of a light outage. CenterPoint does not dispute the violations, but requests a forfeiture reduction based on certain staffing issues and a purported history of compliance with the Commission's rules. We find these arguments provide an insufficient basis to reduce the forfeiture and deny CenterPoint's request.

2. Specifically, we issue a monetary forfeiture to CenterPoint, owner of antenna structure number 1281666, in Katy, Texas (Antenna Structure), for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act), and Sections 17.48(a) and 17.51(a) of the Commission's rules (Rules).¹

II. BACKGROUND

3. On May 6, 2013, the Enforcement Bureau's Houston Office (Houston Office) issued a Notice of Apparent Liability for Forfeiture (NAL) to CenterPoint proposing a \$10,000 forfeiture against it for antenna structure lighting violations.² In its *NAL Response*, CenterPoint acknowledged that, due to a malfunction in its remote alarm monitoring system, it did not become aware of the Antenna Structure light outage until September 26, 2012.³ It also stated that because its "operations personnel who facilitate and performed repairs to the [Antenna] Structure were not aware of the Commission's rule requiring notice to the FAA," it did not notify the FAA of the outage until October 5, 2012, when its licensed consultant and designated contact for the Antenna Structure returned to the office following medical leave.⁴ CenterPoint further stated that the Antenna Structure lights and remote monitoring system were repaired on September

¹ 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48(a), 17.51(a).

² *CenterPoint Energy, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6305 (Enf. Bur. 2013). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ Letter from Brett Heather Freedson, Counsel for CenterPoint Energy, Inc., to Resident Agent, Houston Office, South Central Region, Enforcement Bureau at 2 (May 24, 2013) (on file in EB-FIELDSCR-12-00003788) (*NAL Response*).

⁴ *Id.* at 3. *See also NAL*, 28 FCC Rcd at 6305–06, para. 3 n. 8.

28, 2012, and internal procedures were adopted to prevent recurrence of similar violations.⁵ CenterPoint requested reduction or cancellation of the proposed forfeiture due to its “flawless record of compliance with the Commission” and the extenuating circumstances which prevented the licensed consultant and designated contact for the Antenna Structure from learning of the outage on the Antenna Structure.⁶

III. DISCUSSION

4. As CenterPoint does not deny any of the facts stated in the *NAL*, we affirm the *NAL*’s findings and conclude that CenterPoint willfully and repeatedly violated Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Rules by failing to exhibit required antenna structure lighting and notify the FAA of a light outage.

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining CenterPoint’s *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ As discussed below, we have considered CenterPoint’s *NAL Response* in light of these statutory factors and find that a reduction of the forfeiture is unwarranted.

6. In its *NAL Response*, CenterPoint states that it repaired the Antenna Structure lights, fixed its remote monitoring system, and adopted internal compliance procedures to avoid future violations.¹¹ While such actions are commendable, we note that corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.¹² CenterPoint also states that its operations personnel were unaware of the Rule requiring lighting outage reporting to the FAA.¹³ Even if CenterPoint’s technicians were unaware of the notification requirement, however, the Commission has consistently held that lack of knowledge or erroneous belief does not warrant a downward adjustment of the forfeiture.¹⁴

⁵ *NAL Response* at 2–4.

⁶ *Id.* at 2–3.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL Response* at 2–4.

¹² See, e.g., *Mattoon Broad. Co.*, Forfeiture Order, 29 FCC Rcd 2925 (Enf. Bur. 2014); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121 (Enf. Bur. 2014); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013).

¹³ *NAL Response* at 3.

¹⁴ See *REMEL, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 8778, 8782, para. 9 (2013) (declining to downwardly adjust a forfeiture when company did not know that operation of radio transmitting equipment required a license); *Profit Enters., Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed”); *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) (“[I]nadvertence’ . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); see also *Emigrant Storage*, Notice of Apparent Liability for Forfeiture, 27 (continued....)

7. CenterPoint requests cancellation or reduction of the forfeiture reduction due to the extenuating circumstances involving the health issues of its designated contact.¹⁵ We find this argument unpersuasive. Section 17.48(a) of the Rules states that owners of antenna structures “shall report *immediately* . . . any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.”¹⁶ The Houston Office mailed CenterPoint written notice of the light outage on September 10, 2012, which was received a few days later.¹⁷ However, CenterPoint contends that it did not become aware of the lighting outage until September 26, 2012, after it discovered a malfunction in its remote alarm system.¹⁸ We note that CenterPoint last inspected its remote alarm system on June 21, 2012, and could have discovered the malfunction earlier if it inspected its system as regularly as required by the Rules.¹⁹ Even if CenterPoint did not become aware of the outage until September 26, 2012, it did not report the outage until nine days later, when its designated contact returned from leave.²⁰ The absence of CenterPoint’s designated contact did not absolve it of its obligation to immediately report a known lighting outage at the Antenna Structure to the FAA, and we decline to reduce the forfeiture on this basis.

8. CenterPoint also requests cancellation or reduction forfeiture based on its history of compliance with the Rules.²¹ We have reviewed our records and found that CenterPoint was issued a Notice of Violation on December 16, 2011, for failure to post an Antenna Structure Registration number on another of its antenna structures.²² Accordingly, we conclude reduction on the basis of history of compliance is not warranted.²³

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, CenterPoint Energy, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 303(q) of the Act and Sections 17.48(a) and 17.51(a) of the Rules.²⁴

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁶ CenterPoint Energy, Inc. shall send

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FCC Rcd 8917, 8920, para. 9 (Enf. Bur. 2012) (declining to downwardly adjust a forfeiture where the violation resulted from oversight and a change in personnel).

¹⁵ *NAL Response* at 2–3.

¹⁶ 47 C.F.R. § 17.48(a) (emphasis added).

¹⁷ *See NAL*, 28 FCC Rcd at 6305–06, para. 3; *see also NAL Response* at 3.

¹⁸ *NAL Response* at 2.

¹⁹ *See* 47 C.F.R. § 17.47(b) (requiring inspection of automatic alarm systems at intervals not to exceed 3 months to insure that such apparatus is functioning properly).

²⁰ *NAL Response* at 3.

²¹ *Id.* at 2.

²² *See CenterPoint Energy, Inc.*, Notice of Violation, NOV No. V201232540008 (Enf. Bur. Dec. 16, 2011).

²³ If CenterPoint believes that paying the forfeiture presents financial difficulties, we note that it could always request an installment payment plan to lessen the immediate impact of the forfeiture. *See infra* para. 11.

²⁴ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.48(a), 17.51(a).

²⁵ 47 C.F.R. § 1.80.

²⁶ 47 U.S.C. § 504(a).

electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to CenterPoint Energy, Inc. at 1111 Louisiana Street, Suite 1673B, Houston, Texas 77002, and to its counsel, Brett Heather Freedson, Eckert Seamans Cherin & Mellott LLC, at 1717 Pennsylvania Avenue NW, 12th Floor, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 C.F.R. § 1.1914.